

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JEVAN COMBS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-02-0070

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on January 8, 9, and 12, 2004.

1.2 **Appearances.** Appellant Jevan Combs was present and was represented by Michael Davis, Attorney at Law. Adrienne Harris, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant gave his state issued keys to an inmate.

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 30, 2002.

2.2 Appellant began his employment with the Department of Corrections (DOC) on April 1, 1996, and he became employed at McNeil Island Corrections Center (MICC) in August 2000. At the time of his dismissal, Appellant was a Correctional Officer 2 at MICC, with the F Unit.

2.3 Appellant had no history of prior formal disciplinary action; however, his personnel file included the following:

- A January 16, 2002 Supervisory Conference Memo addressing Appellant's use of abusive language and instructing him to behave in a professional manner.
- A January 22, 2002 Letter of Concern addressing Appellant's unprofessional behavior and abusive language.

2.4 The DOC Employee Handbook directs employees to maintain high moral and ethical standards by demonstrating honesty and a commitment to professionalism. The handbook further instructs employees to perform their duties safely and to refrain from bartering or making personal deals with offenders.

2.5 The MICC Field Instruction 420.550 states, in relevant part:

2. Keys will never be left unattended or without direct staff control ...

1
2 H. Inmates and Keys

- 3 1. Inmates are only authorized possession of their assigned room key.
4 2. Excepting those inmates designated as vehicle drivers, no inmate is authorized to
5 handle or possess any MICC key or lock.

6 2.6 By signature dated April 1, 1996, Appellant acknowledged he received the DOC Employee
7 Handbook and agreed to become familiar with its contents. Appellant also agreed it was his
8 responsibility to become familiar with agency policies and directives.
9

10 2.7 By letter dated July 29, 2002, Alice Payne, Superintendent of McNeil Island Corrections
11 Center, informed Appellant of his immediate suspension without pay effective July 29, 2002
12 through August 13, 2002, followed by his dismissal effective August 14, 2002. Ms. Payne charged
13 Appellant with neglect of duty, gross misconduct, and willful violation of published employing
14 agency or Department of Personnel rules or regulations. Ms. Payne alleged that Appellant gave his
15 state-issued keys to Inmate Faletogo.
16

17 2.8 Appellant denied he gave Inmate Faletogo his keys to open the cuffport. Appellant claimed
18 he baited the inmate into opening the cuffport, by asking him to deliver something to another
19 inmate, in an attempt to discover whether a rumor that inmates could open cuffports was true. We
20 find that Appellant's version of events also would have violated agency policy.
21

22 2.9 We find that Officer Wyman Rhodes gave consistent testimony throughout the preceding
23 investigation, and his demeanor and testimony before us have been forthright, candid and credible,
24 and we find no reason to disbelieve him. Therefore, based on the credible testimony provided by
25
26

1 Officer Rhodes, we find that Appellant gave his keys to Inmate Faletogo in order to deliver
2 something to another inmate, and as a result, the inmate was able to open the cuffport.

3
4
5 2.10 On March 18, 2002, Officer Beverly Sanders was stationed in the control booth at the F
6 Unit, which is the maximum-security segregated unit in which inmates are locked up 23 hours per
7 day. The F Unit consists of three different two-tiered pods. Officer Sanders observed Inmate
8 Faletogo, who was a porter charged with assisting officers and cleaning the unit, on the second tier
9 of "B Pod" fumbling with one of the cuffports. Inmate Faletogo managed to get the cuffport open
10 and tossed something to the inmate inside the cell.

11
12 2.11 Officer Sanders announced through the control booth speakers that Inmate Faletogo had just
13 opened the cuffport. Inmate Faletogo, after hearing Officer Sanders' announcement, immediately
14 descended the stairs of the "B Pod" from the second tier towards Appellant. Appellant, who was
15 standing at the "B Pod" door with that door's cuffport open, told Officer Sanders, "I saw it, too, and
16 I'll take care of it." Officer Sanders diverted her attention to telephone Sergeant Gerald Bailey to
17 report that Inmate Faletogo had just opened a cuffport and that Appellant was handling the
18 situation.

19
20 2.12 Officer Wyman Rhodes, hearing Officer Sanders' announcement, walked over to stand
21 behind Appellant and observed that Inmate Faletogo had something in his hand as he descended the
22 stairs. When Inmate Faletogo approached the door at the bottom of the stairs, he reached toward
23 Appellant with his hand. Officer Rhodes saw a gold cuffport key dangling from the inmate's hand,
24 which he gave to Appellant through the cuffport. Officer Rhodes observed Appellant attempting to
25 hook the keys to his belt. Officer Rhodes asked Appellant, "You are taking a chance by doing that,
26 aren't you?" and Appellant replied, "Naah."

1
2 2.13 Sometime later that day, Appellant asked Officer Rhodes if he thought “Sanders would
3 snatch him off.” Officer Rhodes replied, “I don’t know, but you better talk to her.”
4
5

6 2.14 Approximately a week later, Sergeant Bailey, Officer Sanders, and Officer Rhodes were in
7 the break room. Officer Sanders asked Sergeant Bailey if Inmate Faletogo had been disciplined for
8 the cuffport incident. Assuming that Appellant had reported the events of March 18th and the other
9 officers were aware of what had happened, Officer Rhodes said, “Oh, so you know about the keys?”
10 Officer Rhodes became very upset when he realized that none of the other officers knew about the
11 keys, and he had just unknowingly informed on another officer.
12

13 2.15 Sergeant Bailey immediately informed F Unit Supervisor Gerald Isham of the cuffport
14 incident involving Appellant and his keys.
15

16 2.16 By letter dated March 27, 2002, Alice Payne, Superintendent of McNeil Island Correction
17 Center, assigned Appellant to home with full pay effective immediately.
18

19 2.17 On April 12, 2002, David O’Connor, Correctional Program Manager, completed an
20 Employee Conduct Report. When being interviewed by Investigator O’Connor, Officer Rhodes
21 stated he was positive a key exchange had taken place between Appellant and Inmate Faletogo.
22

23 2.18 Superintendent Payne interviewed Officer Rhodes, who stated that he was certain he saw the
24 keys in Inmate Faletogo’s hand.
25
26

1 2.19 Superintendent Payne reviewed Investigator O'Connor's Employee Conduct Report, the
2 administrative review notes, the relevant agency policies, and Appellant's responses.
3 Superintendent Payne concluded that Appellant neglected his duty, engaged in gross misconduct,
4 and willfully violated published agency rules when he gave his state issued keys to Inmate
5 Faletogo.

6
7
8
9 2.19 In determining the level of discipline, Superintendent Payne considered the seriousness of
10 Appellant's misconduct since giving keys to an inmate is the most serious level of a security
11 violation. Superintendent Payne felt Appellant could not be trusted to perform his duties as a
12 Correctional Officer, and concluded that termination was the only appropriate sanction.

13 14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Officer Rhodes had no motive to lie about the incident, and that
16 Appellant engaged in a serious security violation by giving Inmate Faletogo his state issued
17 segregation unit keys. Respondent asserts that Appellant's actions violated department policy,
18 violated common sense, and put all his fellow officers at great risk. Respondent contends that
19 Superintendent Payne could no longer trust Appellant to perform his duties as a Correctional
20 Officer, and that dismissal was the only viable option considering the outrageous breach of security
21 and the level of risk created by Appellant's conduct.

22
23 3.2 Appellant argues that during his employment with DOC, he was respected by his
24 supervisors and fellow officers for his teamwork, professionalism and competency, and he was
25 never disciplined for safety or rule violations. Appellant asserts he did not give his keys to Inmate
26 Faletogo. Appellant contends that MICC terminated him for something he did not do based solely

1 on the word of Officer Rhodes. Appellant contends the Employee Conduct Report Investigation
2 was flawed because Investigator O'Connor did not discover where the alleged exchange of keys
3 took place. Appellant asks the Board to reinstate him to his Correctional Officer 2 position and
4 award him back pay.

5 6 IV. CONCLUSIONS OF LAW

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
8 herein.

9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
10 the charges upon which the action was initiated by proving by a preponderance of the credible
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
12 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
13 Corrections, PAB No. D82-084 (1983).

14
15 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
16 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
17 of Social & Health Services, PAB No. D86-119 (1987).

18
19 4.4 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry
20 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
21 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
22 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

23
24 4.5 Willful violation of published employing agency or institution or Personnel Resources
25 Board rules or regulations is established by facts showing the existence and publication of the rules
26

1 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
2 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

3
4 4.6 Respondent has met its burden of proof that Appellant willfully violated agency policy and
5 neglected his duty to abide by all departmental policies, when he gave his keys to an inmate.

6
7 4.7 Respondent has met its burden of proof that Appellant engaged in gross misconduct when
8 his actions violated the security and safety operations of the institution. Appellant's actions
9 interfered with MICC's mission to provide a safe and secure environment to staff and inmates.

10 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
11 the facts and circumstances, including the seriousness and circumstances of the offenses. The
12 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
13 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
14 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

15
16 4.9 In light of Appellant's egregious behavior, Respondent has established the disciplinary
17 sanction of dismissal was not too severe and was appropriate under the circumstances presented
18 here. Therefore, the appeal should be denied.

19
20 **V. ORDER**

21 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jevan Combs is denied.

22
23 DATED this _____ day of _____, 2004.

24
25 WASHINGTON STATE PERSONNEL APPEALS BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

Busse Nutley, Member